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### **A second rejection of the Deutsche Börse - NYSE Euronext merger**

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<http://leidenlawblog.nl/articles/competition-in-financial-markets-a-second-rejection>

*The General Court upheld the 2012 Commission's decision prohibiting the proposed merger between Deutsche Börse and NYSE Euronext, as it would have resulted in a quasi-monopoly in the area of European financial derivatives traded globally on exchanges.*

In 2011, Deutsche Börse and NYSE Euronext – companies active in the financial markets sector – notified the Commission of their proposed merger. The [Commission](#) launched an in-depth investigation, which focused on the effects of the merger on the markets for European financial derivatives traded on exchanges (ETDs). These are distinguished from over-the-counter derivatives (OTCs). Exchange-traded derivatives are fully standardised liquid products typically traded in small size (around €100 000 per trade), whereas over-the-counter derivatives are much bigger contracts (around €200 000 000 per trade) that allow customisation of their legal and economic terms. The Commission concluded that those two types of derivatives belonged to two separate markets and were not considered as substitutes by customers. Thus, derivatives users would not switch from exchange to OTC if the merged entity were to increase trading fees.

Furthermore, the investigation showed that together the two companies controlled more than 90% of the global trade in European financial derivatives. In particular, Deutsche Börse owns and operates the Eurex, an electronic derivatives exchange formed by a merger of the Deutsche Terminbörse and the Swiss Options and Financial Futures Exchange in 1998. NYSE Euronext owns and operates the Liffe (London International Financial Futures and Options Exchange), a financial futures market established in 1982. Eurex and Liffe are the two largest exchanges in the

world for financial derivatives based on European underlyings and they are each other's closest competitors. Consequently, the merger would have eliminated global competition and created a quasi-monopoly in European financial derivatives, leading to significant harm to derivatives users and the European economy as a whole.

Additionally, the merger would have created barriers to entry for new competitors, since these derivatives contracts could only be cleared by Deutsche Börse's or NYSE Euronext's integrated clearing houses (a vertical silo system). Moreover, it would not have brought economy-wide benefits or improved financing possibilities for SMEs. In this regard, the [Commission](#) emphatically underlined that 'it is competition, and not consolidation leading to monopoly, that brings about benefits to the economy and users in terms of lower fees, better liquidity, higher quality services and more innovation'.

Finally, the efficiencies resulting from the proposed merger were not sufficient to outweigh the harm stemming from the monopoly that would have been created, and the remedies offered by the parties were insufficient in scope and unlikely to be effective in practice.

On 9 March 2015, the [General Court](#) dismissed the action for annulment brought by Deutsche Börse and fully confirmed the Commission's findings. The judgment was warmly welcomed by the [Commission](#) as an endorsement of its on-going regulatory efforts to maintain the markets of European financial derivatives competitive. This is in line with MIFID and the general regulatory policy in the financial sector. As [Joaquín Almunia](#) stated, the markets of European financial derivatives 'are at the heart of the financial system and it is crucial for the whole European economy that they remain competitive'. It is interesting to note that the grounds of judgment have not been published due to their confidential nature.